IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2007

CORAM

THE HONOURABLE MR. JUSTICE A.KULASEKARAN

W.P. No. 12368 of 2007
and
M.P. No. 1 of 2007

-o-

V. Subramani .. Petitioner

Versus

1. The Secretary to the Government
   Rural Development and Panchayatraj
   Department
   Secretariat
   Chennai - 600 009

2. The Director
   Rural Development and Panchayatraj
   Department
   Panagal Buildings
   Saidapet, Chennai - 600 015

3. The District Collector
   Vellore District
   Vellore - 632 009

4. The Assistant Director (Panchayats)
   Vellore District
   Vellore - 9

5. Officer conducting Election and
   Commissioner
   Aalangayam Panchayat Union/
   Block Development Officer
   Panchayat Union
   Aalangayam
   Vellore District

6. G. Devendiran
7. R. Sujatha
8. Sundara
9. T. Anandan .. Respondents

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Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus as stated therein.

For Petitioner : Dr. A.E. Chelliah, Sr. Advocate
for Mr. K. Ramanujam

For Respondents : Mr. I. Paranthaman
Addl. Govt. Pleader for RR1 to 4

Mr. J. Raja Kalifullah
Government Pleader for RR5, 8 & 9

Mr. S. Annamalai for RR6 and 7

ORDER

The petitioner has come forward with this writ petition praying for a Writ of Mandamus directing the respondents to act in accordance with law and procedure to enable the President of the said Panchayat, the petitioner herein, to discharge the Panchayatraj responsibilities as envisaged under Article 243 (g) of the Constitution of India.

2. Dr. Chelliah, learned Senior counsel appearing for the petitioner reiterated the contents of the affidavit filed in support of the writ petition and submitted as follows:-

The petitioner was elected as President of Vallipattu Panchayat in the Aalangayam Panchayat Union, Vellore District. There are three members to be elected in the said ward, in which, one is meant for women. Altogether 11 candidates contested in the said ward in the election held on 15.10.2006. Counting was held on 18.10.2006. The fifth respondent was the election officer. Out of the three elected persons, there is no dispute with respect to one of the elected members namely Bhaskaran. The fifth respondent, by his proceedings dated 18.10.2006 cancelled the declaration made originally to respondents 8 and 9 and gave declaration in favour of the respondents 6 and 7. The respondents 6 and 7 have produced the declaration only on 03.11.2006 and oath was administered to them on the same day. Soon after the election, the petitioner also conducted two panchayat meetings in which the respondents 6 and 7 participated. However, the respondents 8 and 9 were permitted to participate in the election of vice-president at the instance of the fifth respondent, hence, the petitioner sought for clarification from the fourth respondent. The fifth respondent, in his proceedings dated 02.02.2007 informed the petitioner that the respondents 6 and 7 cannot be allowed to participate in the meetings and proceedings and only respondents 8 and 9 are entitled to participate, though he originally declared the respondents 6 and 7 as elected. As against the requirement of 9 members, 11 members were sworn-in and the said scenario has affected the smooth functioning of the panchayat, besides, the same is violative of mandatory provisions of the Tamil Nadu Panchayat

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Act, the present writ petition has been filed and prayed for allowing of the writ petition.

3. Mr. I. Paranthaman, learned Additional Government Pleader appearing for the respondents 1 to 4, reiterated the contents of the counter affidavit of the third respondent/ District Collector in his arguments and submitted as follows:-

The election to the Vallipattu Panchayat was held on 15.10.2006. On 18.10.2006, counting was held. The fifth respondent has originally issued declaration in Form No.24 and 26 declaring the respondents 8 and 9 as elected. Due to wrong information given by a Panchayat clerk/Office Assistant namely Suresh, the fifth respondent cancelled the declaration issued to respondents 8 and 9 and issued a declaration declaring respondents 6 and 7 as elected. Finally, after verifying all the records and after satisfying himself, the fifth respondent by his letter Rc.A3/2366/06 dated 23.10.2006 revoked the cancellation of declaration of respondents 8 and 9 since they secured more votes than the respondents 6 and 7 and communicated the same to the petitioner. The petitioner, in his own self-interest administered oath to the respondents 6 and 7 on 03.11.2006 without informing the panchayat union officials in advance, that too, in the absence of the panchayat union representatives. The petitioner was fully aware that in the election conducted on 13.11.2006 for the post of Vice-president, the respondents 8 and 9 have exercised their franchise and signed in the minute book of the panchayat. On the representation dated 08.02.2007 of the petitioner, the third respondent, after verifying all the records, including Form No.24 and 26, passed an order in Rc.PC2/2393/ 07 dated 05.03.2007 confirmed the list of finally elected members from ward No.2 published by the fifth respondent. The fifth respondent in his letter dated 16.02.2007 sought for explanation from the petitioner regarding the irregularities committed by the petitioner between 25.10.2006 and 05.12.2006 namely in not allowing the actually declared elected persons to attend the panchayat meeting, creating law and order problem by not administering oath to the actually elected declared persons, administering oath to the non-elected persons and passing resolutions by signing himself alone etc., but the petitioner has not given any explanation deliberately. Necessary action has already been initiated against the fifth respondent under Rule 17 (b) for the lapses committed by him and an enquiry officer was also appointed. If really, the respondents 6 and 7 have any grievance, they would have made some complaint, but they have not done so. It is not explained how the petitioner is an aggrieved party. The petitioner is wantonly creating confusion and law and order problem by not obeying the election Rules the instructions given by the respondents 3 and 5 and prayed for dismissal of the writ petition.

4. Mr. Raja Kalifullah, learned Government Pleader appearing for the respondents 5, 8 and 9, reiterated the contents of the counter affidavit as well as the additional counter filed by the fifth respondent and argued as follows:-

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The writ petition is not maintainable either in law or on facts and the same is liable to be dismissed in limini. The petitioner has filed the present writ petition suppressing the material facts with an ulterior motive. Initially, there was a confusion and the same was set right and the elected candidates were announced on 18.10.2006, which is not challenged till date. The petitioner has administered oath to respondents 6 and 7 contrary to the declared results. The petitioner has also filed a representation to the third respondent/District Collector, on that, an enquiry was ordered by him and thereafter, an order was passed confirming the declaration of the respondents 8 and 9 as duly elected. The petitioner was fully aware of all those proceedings, for the reasons best known to him, he conveniently suppressed the same. The fifth respondent first declared respondents 8 and 9 as elected. Then, it was found that some report was wrongly given to him by the Office Assistant/Panchayat Clerk namely Suresh, hence, the said declaration in favour of the respondents 8 and 9 was cancelled and the respondents 6 and 7 were declared as elected, but the copy was not served on them. Then, after careful and detailed scrutiny of the records, it was found that the respondents 8 and 9 have secured more votes than the respondents 6 and 7 and they were declared as elected by cancelling the declaration made in favour of the respondents 6 and 7. The elected members were sworn in on 25.10.2006 and participated in the meeting held on the same day. On 03.11.2006, the petitioner has convened an urgent meeting and administered oath to the respondents 6 and 7, who were not elected. Later, it was found that one Suresh, Office Assistant of Vallipattu Panchayat Union colluded and conspired with the respondents 6 and 7, served the copy which was prepared at the second instance. Thereafter, an enquiry was conducted and the said Suresh was found guilty and ultimately, he was suspended. The fifth respondent requested the petitioner to permit the respondents 8 and 9 to participate in the meeting and not respondents 6 and 7 as they were not elected. On 05.12.2006, 22.12.2006 and 09.02.2007, the petitioner has conducted meeting and allowed the respondents 6 and 7 to participate in the same. The petitioner also sent a representation dated 08.02.2007 to the third respondent and on 17.02.2007, the third respondent ordered to conduct an enquiry by the ADRO and on consideration of the same, the third respondent has passed an order dated 05.03.2007 confirming the order of the fifth respondent that the respondents 8 and 9 as elected, copy of the same was also served on the petitioner. The petitioner ought to have followed the said order of the District Collector, but he failed to do so and chosen to file the present writ petition on 02.04.2007. Relying on the additional counter, it is submitted by the learned Government Pleader that the fifth respondent denies the averments of the petitioner that the order dated 18.10.2006 in proceedings Na.Ka.A3/2366/06 was signed on 14.06.2007 and explained that the copies of the proceedings were attested on 14.06.2007 for the purpose of preparing typed set in this writ petition; that Form 26 declaration was issued on 18.10.2006 itself, declaring

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respondents 8 and 9 as elected alone with one Bhaskaran, another member of ward No.2 and the same was published in the notice board as per Rule 69 (4). The subsequent order dated 23.10.2006 referred to in page No.11 of the petitioner's typed set is of no consequences and it cannot be a ground to dispute the declaration earlier issued and prayed for dismissal of the writ petition.

5. Mr. Annamalai, learned counsel appearing for the respondents 6 and 7, relying on the identical counter affidavit filed by the respondents 6 and 7 has submitted that the fifth respondent declared the respondents 6 and 7 as duly elected, pursuant to that, the petitioner administered oath to them and the said declaration was never cancelled. The averment that one Suresh, Panchayat Clerk/ Office Assistant colluded with the respondents 6 and 7 is false. At the time of election of Vice-president, the Deputy Block Development Officer one R. Sukumaran requested the respondents 6 to 9 not to participate in the election, hence, they left, but the respondents 8 and 9 have attended, however, the respondents 6 and 7 have participated in all the subsequent meetings.

6. This Court carefully considered the argument of the counsel on both sides and perused the records placed. The election for the post of three members of Ward II of Vallipattu Village was held on 15.10.2006. Out of the three, one Bhaskaran in general category was elected as one of the members, which is not in dispute. For the remaining two members namely general and women category, the respondents 6 and 7 and respondents 8 and 9 claim that they were elected and necessary declaration was also issued to them by the fifth respondent. It is stated by the fifth respondent that the respondents 8 and 9 were originally declared elected, thereafter, some report was wrongly given to him, based on that their declaration were cancelled and simultaneously, declaration was made in favour of respondents 6 and 7, but the declaration copies were not served on the respondents 6 and 7. It is stated that after careful re-scrutiny of the records by the fifth respondent, it was again declared that respondents 8 and 9 were elected on 18.10.2006 itself since they have secured more votes. Consequently, the declaration made in favour of the respondents 6 and 7 were cancelled. It is further stated by the fifth respondent that the document created in collusion with the respondents 6 and 7 was produced by the Panchayat Clerk/Office Assistant namely Suresh, which misled him, eventually made him to cancel the declaration made in favour of the respondents 8 and 9 and necessary action was also initiated against the said Suresh and he was placed under suspension. It is further stated that necessary instructions were given by the fifth respondent to the petitioner not to permit the respondents 6 and 7 in any of the panchayat meetings as they were not elected, but the petitioner ignored it and permitted them in the meetings held on 05.12.2006, 22.12.2006 and 09.02.2007. Based on the representation dated 08.02.2007 made by the petitioner to the third respondent, an enquiry officer namely the fourth respondent was appointed, which was considered along with other records and

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necessary order dated 05.03.2007 was passed by the District Collector/third respondent, confirming the declaration made in favour of the respondents 8 and 9 along with the said Bhaskaran and the copy of the same was also served on the petitioner.

7. The District Collector/third respondent has stated that on 18.10.2006, the day on which votes were secured, the fifth respondent in his declaration Form 24 and 26 has declared the respondents 8 and 9 as elected, later, on the same day, due to heavy rush of elected persons from various wards of Panchayats, who were to be declared, the fifth respondent, without verifying the report furnished by the Panchayat Clerk/Office Assistant namely Suresh has wrongly declared the respondents 6 and 7 as elected by cancelling the declaration originally made in favour of the respodnents 8 and 9, however, on 18.12.2006 itself, after verifying and scrutinising the entire records, the fifth respondent has cancelled the declaration made in favour of the respondents 6 and 7 and simultaneously declared the respondents 8 and 9 as elected. It is also submitted that ignoring the said orders, the petitioner has administered oath to the respondents 6 and 7 on 03.11.2006 without even informing the panchayat union officials in advance and in the absence of panchayat union representatives. The petitioner was also aware that in the election of Vice-president held on 13.11.2006, the respondents 8 and 9 have exercised their franchise and signed in the minute book of Vallipattu Panchayat. It is also further stated by the third respondent that on the representation dated 08.02.2007 of the petitioner, he after verifying all the records, including Form Nos. 24 and 26 and the report sent to the Tamil Nadu State Election Commission and the details available on the file of the fifth respondent, has sent a letter Rc.PC/2393/07 dated 05.03.2007 informed the petitioner that the list of finally elected members from ward No.2, prepared and published on 18.10.2006 by the fifth respondent was correct and valid. It is seen from the records that the third respondent has framed necessary charges against the fifth respondent under Rule 17 (b) for the lapses committed by the fifth respondent and appointed an enquiry officer.

8. In view of the above said explanation offered by the respondents 3 and 5, in the back drop of the cancellation of declaration made against the respondents 6 and 7 on 18.10.2006 was not challenged by them and also the fact that necessary orders were passed under Rule 67 (3) (a) in Form No.24 by the fifth respondent announcing the votes secured by the respondents 6 to 9, which is also not disputed either by the petitioner or the respondents 6 and 7 and the other factors that respondents 8 and 9 were allowed to vote in the election of vice-president held on 13.11.2006 but the respondents 6 and 7 were not admittedly permitted, which was also not challenged by the respondents 6 and 7 and even before filing this writ petition, the District Collector/third respondent has clarified in his communication in letter NO. Rc.PC2/2393/2007 dated 05.03.2007 that the declaration made in favour of the respondents 8 and 9 was valid, this Court

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is of the view that the petitioner has not made out any case to substantiate the averment that he was not allowed to carry on the function of the Panchayat smoothly.

9. In this context, it is necessary to peruse the relevant Rules of Tamil Nadu Panchayat (Elections) Rules 1955, which are extracted as under:-

> "67. Declaration of result of election.-
>
> 1. ....
> 2. ....
>
> (3) (a) In the case of election of member of Village Panchayats, after the Returning Officer has completed the scrutiny and counting of votes, he shall declare elected, the contesting candidate or candidates as the case may be, to whom the largest number of valid votes have been given and complete and certify the return in Form 24 and send the signed copy thereof to the District Election Officer and the State Election Commission.
>
> Provided that if one or more seats are reserved for members of the Scheduled Castes or Scheduled Tribes (xxx) the Returning Officer shall first declare elected the candidate/candidates who are eligible to be voted to such seats and to whom the largest number of valid votes have been given to the seats so reserved and then declare elected the contesting candidate or candidates who among the remaining contesting candidates have obtained the largest number of votes to the non-served seats in such ward.
>
> 68. Disposal of Ballot Papers - (1) The Returning Officer, shall after declaring the results, retain in his custody or cause to be deposited in the custody of the officer as may be specified by the State Election Commission, the packets of ballot papers, whether counted, rejected, cancelled or unused, the sealed packets containing the declarations under sub-rule (2) of rule 52 and the marked copy of the electoral roll. These packets shall not be opened and their contents shall not be inspected or produced except under the orders of an election or other competent Court.

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10. Rule 67 (3) (a) clearly sets out that in the case of election of member of Village Panchayats, the Returning Officer, after completion of scrutiny and counting of votes shall declare elected the candidate to whom the largest number of valid votes have been given and complete and certify the return in Form 24 and send the signed copy thereof to the District Election Officer and the State Election Commission. Rule 68 (1) very specifically speaks that once the Returning Officer issued declaration certificate, the packets of ballot papers, whether counted or rejected, cancelled or unused, the sealed packets containing the declarations and the marked copy of the electoral roll shall retain in his custody or deposited in the custody of a competent officer. Those packets shall not be opened or inspected except under the orders of an election or other competent Court. In this case, the fifth respondent, after making the declaration in favour of the respondents 8 and 9 stated to have cancelled it based on the documents produced by a Panchayat Clerk/Office Assistant Suresh and gave declaration in favour of the respondents 6 and 7 simultaneously. The said act is prohibited under Rule 68 (1), hence, all other acts or orders made by the fifth respondent after issuing declaration certificate in favour of respondents 8 and 9 are unsustainable. In other words, the original declaration made in favour of the respondents 8 and 9 alone is valid.

11. The petitioner is not a person prejudically affected by the act or omission of the official respondents. Besides that the averments made by the petitioner are not having any bone of contention.

12. For the said reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

rsh

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to the Government
   Rural Development and Panchayatraj
   Department
   Secretariat
   Chennai - 600 009

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2. The Director
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   Saidapet, Chennai - 600 015

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5. Officer conducting Election and
    Commissioner
   Aalangayam Panchayat Union/
   Block Development Officer
   Panchayat Union
   Aalangayam
   Vellore District

+ 1 cc to Mr. J. Rajakalifulla, Advocate, SR No.66817

+ 1 cc to M/s. K. Ramanujan, Advocate, SR No.66654

Order in
WP No. 12368 of 2007

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